

Lease History: ..
Lease & Operating Agreement
First Amendment
Second Amendment

Filed with FMC
March 17, 2008
March 1, 2012
August 20, 2013

FMC Reference No:
201179
201179-001
201179-002

#2051

THIRD AMENDMENT TO LEASE

Parties:

Philadelphia Regional Port Authority
3460 N. Delaware Avenue, 2nd Floor
Philadelphia, PA 19134 ("Lessor")

&

Northeast Energy Terminal, LLC
811 Main Street, Suite 2800
Houston, TX 77002 ("Lessee")

The Lease and Operating Agreement dated March 5, 2008, by and between Lessor and GROWMARK, INC. as Amended by the First Amendment, dated March 1, 2012, the Second Amendment, dated August 20, 2013, and subsequently Assigned to and Assumed by Lessee on April 17, 2015 as amended by this Third Amendment is collectively referred to as the "Lease and Operating Agreement".

Background:

The parties desire to amend the provisions of the Lease and Operating Agreement to amend the Use of the Premises to include discharging and loading of motor vehicles as an approved use.

NOW, THEREFORE, intending to be legally bound hereby and in exchange for good, valuable and sufficient consideration received, Lessor and Lessee covenant and agree as follows:

1. Use of Premises. Paragraph 1.3.1 is hereby deleted and replaced in its entirety as follows:

- 1.3 Use of the Premises.

1.3.1 Lessee shall use the Premises as a marine terminal, which is hereby described in Exhibit "A", which is hereby defined as a facility for: (i) the docking and mooring of vessels (including barges) for the purpose of discharging or loading cargo; (ii) the receipt, temporary storage, distributing, moving, loading and unloading of dry bulk, liquid bulk, and motor vehicles, without limitation, into and from such vessels, trucks and railcars; (iii) the provision of terminal services to vessels; (iv) the transferring of merchandise, goods and cargo to, from, and between cargo vessels (including "LO/LO" lift-on/lift off, load-on/load-off, and "RO-RO" roll-on/roll-off operations), trucks and railcars; and (vi) marine activities similar to the foregoing as approved by PRPA (collectively, the "Permitted Use"). For purposes of this Agreement, the cargo categories listed in Exhibit "H" are authorized to be handled at the Premises.

2. Auto Fees. A new Paragraph 3.9.1 is incorporated into the Lease and Operating Agreement as follows:

3.9.1 Automobile Fee. Commencing on the first day of the Initial Term, Lessee shall pay to PRPA, as additional Rent, a rate of: three dollars and fifty cents (\$3.50) per automobile loaded, discharged by vessel or moved over the Premises, whether by ship, rail, truck or other means, (the "**Automobile Fee**").

For the purposes hereof, cargo is "moved over the Premises" if it is delivered to the Premises by one instrumentality of transshipment and removed by a different

KE

instrumentality of transshipment (e.g. vessel to vessel; truck to vessel, train to truck, vessel to storage, etc.) Lessee will not handle LO/LO and RO-RO, other than Automobiles until such time as Lessor and Lessee agree to an appropriate rate .

3. Payment of Dockage, Tonnage and Automobile Fees. Section 3.10 is hereby deleted and replaced in its entirety as follows:

3.10 Payment of Dockage, Tonnage Fees and Automobile Fees. On or before the 15th day of each month for the preceding calendar month, Lessee shall provide PRPA with a breakdown, together with all data relevant to the computation thereof, of the Automobile Fees, Tonnage Fees and Dockage Fees generated (“**Monthly Report**”) for such month and for the year to date. Within thirty (30) days of the date each such Monthly Report is due, Lessee shall pay to PRPA, as additional Rent, the Automobile Fee, Tonnage Fee and the Dockage Fee due for such month as is listed in each Monthly Report (i.e. the Tonnage Fees and Dockage Fees due for January of any year during the Term shall be paid to PRPA no later than March 15 of that year.); provided that Lessee’s failure to submit such Monthly Report on a timely basis shall not excuse Lessee’s obligation to pay such additional Rent as and when due. The Automobile Fee, Tonnage Fee and the Dockage Fee for the final month of the Term of this Agreement shall be due and payable on the fifteenth (15th) day of the second calendar month immediately following the date of termination or expiration of this Agreement.

Lessee shall submit to Lessor on or before the sixtieth (60th) day following the end of each Lease Year (including the final Lease Year) a written statement, signed and certified by Lessee’s duly authorized financial officer to be true and correct, showing (i) an accounting of all cargo moved over the Premises during the preceding Lease Year and the aggregate Automobile Fee and Tonnage Fee payable on account thereof, and (ii) an accounting of all dockage and wharfage charges and revenues charged by Lessee at the Premises during the preceding Lease Year and the aggregate Dockage Fee owing on account thereof.

4. Tonnage Guarantee. Section 3.11 is hereby deleted and replaced in its entirety as follows:

3.11 Tonnage Guarantee. Lessee hereby guarantees the following minimum number of tonnage will be moved over the Premises (“**Tonnage Guarantee**”):

Restoration Period: N/A

Tonnage Guarantee after Restoration Period:

Year 1	150,000 tons per year
Year 2	200,000 tons per year
Year 3	300,000 tons per year
Year 4	350,000 tons per year
Year 5+	400,000 tons per year

It is understood that the weight of the automobiles shall count toward the guaranteed tonnage for purposes of calculating any Tonnage Penalty due. (For purposes of clarity, the weight of the automobiles are not subject to the Tonnage Fee in Section 3.9 as Section 3.9.1 applies). If Lessee does not meet the tonnage guarantee during a Lease Year, Lessee agrees to pay as additional rent, an amount equal to the tonnage guarantee amount less the number of tons actually moved over the Premises multiplied by \$0.50 ("**Tonnage Penalty**"). The Tonnage Penalty shall be paid without need for an invoice or before the sixtieth (60th) day following the end of each Lease Year (including the final Lease Year).

5. Improvements. Lessor will cause the South berth to be dredged an additional 150' to a depth of 36 feet at its sole cost and expense, to be completed no later than December 31, 2016. In the event that Lessee does not handle automobile vessels at the terminal prior to March 31, 2017 or ceases to handle automobile vessels for a period six months, Lessor will not be required to maintain the additional 150' at 36 feet. In the event Lessee handles automobiles at the Premises, Lessee will make the necessary adjustments to the Premises to handle automobiles at its sole cost and expense.

6. Section 3.13 is hereby deleted in its entirety and replaced with the following:

Section 3.13 Reimbursement of Initial Dredging Costs. Subject to PRPA's approval of the actual initial dredging costs, Lessee shall be entitled to a credit against Tonnage Fees and Auto Fees payable pursuant to Section 3.9 and Section 3.9.1 of this Agreement (the "Tonnage Credit") and Section 3.11 of this Agreement (the "Tonnage Penalty") for actual costs of the initial dredging incurred and expended by Lessee pursuant to the Restoration Plan until the earlier of (i) said credits equal the amount of the initial dredging costs; or (ii) eight years have passed from the beginning of the Tonnage Credit.

7. Definitions. Unless otherwise defined in this Amendment, all terms defined in the Lease shall have the meanings ascribed to them in the Lease when used in this Amendment.

8. Lease Remains in Effect. The Lease, as amended hereby, shall remain in full force and effect and time remains of the essence of the Lease and this Amendment. In the event of any conflict or any inconsistencies between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall govern and control.

9. Execution in Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall constitute one and the same instrument.




IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the date first above written.

NORTHEAST ENERGY TERMINAL, LLC

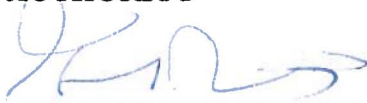
By: 
Name: Kevin LaBorne
Title: Vice President

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: 
Name: Jeff Theobald
Title: Executive Director &
Chief Executive Officer

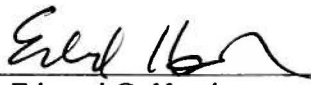
**Approved as to Legality
and Form:**

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

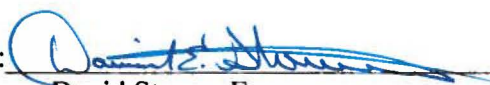
By: 
Name: Gregory V. Iannarelli, Esq.
Title: Chief Counsel

**Approved as to Propriety and
Availability of Funds:**

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

By: 
Name: Edward G. Henderson
Title: Director of Finance &
Capital Funding

**OFFICE OF THE ATTORNEY
GENERAL**

By: 
Name: David Stover, Esq.
Title: Deputy Attorney General

OFFICE OF THE BUDGET

By:  11/23/16
Name: Anna Maria Kiehl
Title: Comptroller